

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JAN 19 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

RENA C.,)	2 CA-JV 2010-0104
)	DEPARTMENT A
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY, SABRINAH S., SOPHIAH R.,)	
XAVIER L., AND ISAIAH S.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100JD200400081

Honorable Joseph R. Georgini, Judge

AFFIRMED

Harriette P. Levitt

Tucson
Attorney for Appellant

Tom Horne, Arizona Attorney General
By Claudia Acosta Collings

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

B R A M M E R, Presiding Judge.

¶1 Rena C. challenges the juvenile court's September 8, 2010 order terminating her parental rights to Sabrinah S., born in September 1999; Sophiah R., born in June 2005; Xavier L., born in April 2008; and Isaiah S., born in September 2009. The court terminated Rena's parental rights based on abandonment; chronic substance abuse; out-of-home placement of nine months or longer as to Sabrinah, Sophiah, and Xavier; and out-of-home placement of six months or longer as to Isaiah.¹ See A.R.S. § 8-533(B)(1), (3), (8)(a), (8)(b). Rena argues the court's findings were not supported by sufficient evidence. We affirm.

¶2 We view the evidence in the light most favorable to upholding the juvenile court's order. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). Child Protective Services (CPS) removed Sabrinah from Rena's care in 2004 based on allegations of drug abuse and neglect. Sophiah was removed from Rena's care just after her 2005 birth because both mother and child tested positive for methamphetamine. Although a dependency petition was filed, the juvenile court dismissed that petition in 2006, based on Rena's participation in drug treatment programs and therapy. In June 2009, CPS removed Sabrinah, Sophiah, and Rena's recently born son Xavier from her care based on neglect and methamphetamine abuse, and the Arizona Department of Economic Security (ADES) filed a dependency petition. At that time, Rena was pregnant with Isaiah, who was born in September 2009 exposed to methamphetamine and so also was removed from Rena's care. After ADES filed a

¹The juvenile court also terminated the parental rights of Isaiah's father, Rojerio S., and Sabrinah's father, Jose S. Neither father is a party to this appeal.

dependency petition as to Isaiah, all four children were adjudicated dependent as to Rena after she failed to appear for scheduled hearings.

¶3 Rena participated only superficially in reunification services and her visitation with the children was suspended because of her inappropriate conduct in asking them about their placements and discussing their removal from her care. By October 2009, Rena refused to communicate with ADES about reunification services. Pursuant to the juvenile court's order, on April 23, 2010, ADES filed a petition to terminate Rena's parental rights to the four children based on abandonment, chronic substance abuse, and time in out-of-home placement. Although Rena then met with a CPS case manager and completed a substance-abuse assessment and some therapy, in July 2010 she told a CPS case manager she was "not going to participate in any more services."

¶4 After a two-day contested severance hearing in August 2010, the juvenile court found that ADES had proven by clear and convincing evidence all the alleged statutory grounds for termination of Rena's parental rights and that ADES had demonstrated by a preponderance of the evidence that severance was in the children's best interests. This appeal followed.

¶5 To terminate parental rights, a juvenile court must find the existence of at least one of the statutory grounds for termination enumerated in § 8-533(B) and "shall also consider the best interests of the child." *Id.* Although statutory grounds for termination must be proven by clear and convincing evidence, only a preponderance of the evidence is required to establish that severance will serve the child's best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d

1013, 1022 (2005). We will affirm an order terminating parental rights unless we can say as a matter of law that no reasonable person could find the essential elements proven by the applicable evidentiary standard. *Denise R.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d at 1265-66.

¶6 Rena does not identify which of the statutory grounds for termination she challenges on appeal. She generally claims she had made efforts toward supporting her children and that ADES never had asked her to provide her children monetary support, apparently in an effort to demonstrate she had not abandoned them. In considering whether a parent has abandoned his or her child, a juvenile court should consider if the parent “has provided ‘reasonable support,’ ‘maintain[ed] regular contact . . .’ and provided ‘normal supervision’” for the child, or if the parent ““has made only minimal efforts to support and communicate with the child.”” *Kenneth B. v. Tina B.*, 595 Ariz. Adv. Rep. 21, ¶ 18 (Ct. App. Nov. 18, 2010), *quoting* A.R.S. § 8-531(1) (first alteration in *Kenneth B.*).

¶7 Here, there was ample evidence Rena had abandoned her children. In addition to the facts described above, the evidence showed Rena last had visited Sophiah and Xavier in August 2009 and last had visited Isaiah and Sabrinah in October 2009. Although she had sent the children gifts through CPS in December 2009, she otherwise neither financially supported them nor communicated with them. And Rena refused to participate in reunification services despite being told by a CPS case manager that she could resume visitation with her children if she did so. *See Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 578, 869 P.2d 1224, 1231 (App. 1994) (suspension of

visitation does not preclude abandonment finding if parent “fail[ed] to comply with the requirements and conditions outlined by ADES”). Thus, by the time of the termination hearing in August 2010, Rena had engaged in no meaningful contact with her children for nearly a year. *See* § 8-531(1) (“Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.”).

¶8 Moreover, Rena cites no authority, and we find none, suggesting ADES is required to request that a parent provide support in order to demonstrate that parent has abandoned his or her children. As ADES correctly notes, a parent is required by statute to provide support. *See* A.R.S. § 25-501. Insofar as Rena’s recent efforts in finding a job and apparently stable living arrangements might allow her to support her children in the future, Rena identifies no evidence suggesting she was willing to do so. Indeed, when asked if she had ever given money to CPS to “care for [her] kids,” she responded, “Why would I do that?” And, to the extent Rena’s efforts arguably support a conclusion she had not abandoned her children, the juvenile court was in the best position to weigh that evidence against the substantial evidence she had in fact done so. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). Rena has provided no basis for us to disturb the court’s determination here.

¶9 We need not address Rena’s suggestion that ADES failed to provide adequate reunification services. When the termination of parental rights is based on abandonment, ADES is not required to demonstrate it provided reunification services. *See Bobby G. v. Ariz. Dep’t of Econ. Sec.*, 219 Ariz. 506, ¶ 11, 200 P.3d 1003, 1007

(App. 2008) (“[N]either § 8-533 nor federal law requires that a parent be provided reunification services before the court may terminate the parent’s rights on the ground of abandonment.”); *Toni W. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 61, ¶ 15, 993 P.2d 462, 467 (App.1999) (ADES not required to provide reunification services when parent abandoned child). Having found sufficient evidence supports one statutory ground for termination, we need not address the remaining grounds. *See Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000) (if termination upheld on any one ground, other grounds need not be addressed). And Rena does not question the juvenile court’s finding that termination of her parental rights was in the children’s best interests.

¶10 For the reasons stated, we affirm the juvenile court’s order terminating Rena’s parental rights.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge